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Editorial

BLISSGLOBAL is the new addition to CimplyFive family in January 2019. Read more…

OPINION:

What is Hot in Company Law?



Listing of the most viewed sections in the Companies Act for the month of January 2019 based on visitors to our free to use website www.ca2013.com.

Read more…

Compliance calendar-February 2019



Due dates for Professional tax, Goods and Service Tax, Companies Act, 2013 among others has been captured for your ready reference. View the list…

Gist of Regulatory Changes in Companies Act, 2013, SEBI (LODR), 2015 and Insolvency & Bankruptcy Code, 2016 in the month of January, 2019

Eleven Regulatory changes in Companies Act, 2013, SEBI (LODR), 2015 and Insolvency & Bankruptcy Code, 2016 were made in the month of January.
View the list…

FIRST OF FIRST:

ESOP: What was the trigger and When?



By Shankar Jaganathan

Today's Midas touch? Ask the select Flipkart and Infosys employees, they will tell you without any hesitation that it is ESOPs. Read more…

BUT: BLISS Useful Tips for the Month

BUT#52: Taking note of Circular Resolutions approved in the next meeting made easy
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BUT#55: Maintain Digital Attendance Registers for all the meetings in BLISS
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Read more…

Releasing this month 'CimplyFive's Report on India Secretarial Practices 2018



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Editorial

BLISSGLOBAL is the new addition to CimplyFive family in January 2019. With BLISSGLOBAL you can now track compliance requirements for foreign companies and have a secure e-repository. With this addition, we now have a more complete portfolio of BLISSLISTED, BLISSPLUS, BLISSGLOBAL BLISSDOCS and BLISS that meets most of the requirements of the Corporate Secretarial function in India.

On the knowledge front, we continue our series started in December 2018 **What's Hot in Company Law.** In the third issue, Chartbusters in January 2019 we have tracked the most popular sections of the Companies Act, 2013, IB Code and the regulations of LODR. In our series the **First of First,** where we trace the evolution of new concepts in company law, this month we have covered the advent of ESOPs and its use today. Our other regular features –**Gist of Changes in the Companies Act, 2013** and **Statutory Compliance Calendar** are also included in this issue.

Please share your feedback on this newsletter with us at contact@cimplyfive.com. We look forward to your feedback with interest and as ever strive to improve the quality of everything we do.

Happy reading,
Shankar Jaganathan
Editor of iComply
February 5, 2019

OPINION:

What is Hot in Company Law?

As many of you may be aware, we provide a free to use website that provides an integrated view of the Companies Act, LODR and IB code. Over the last three years, this site has generated good traction with 3000+ individuals registering for getting updates and attracts more than 1500 visitors who visit more than 4000 pages a day, every working day to be more precise.

Listing of the most viewed sections in the Companies Act for the month of January 2019 based on visitors to our free to use website www.ca2013.com.

Company Law Top 5 Chartbuster sections in January 2019

Jan Rank	Change in Rank	Dec Rank	Section ref.	Section title
1	↑	2	62	Further Issue of Share Capital
2	↑	4	188	Related Party Transactions
3	↔	3	186	Loans and Investments by Companies
4	↑	-	185	Loan to Directors, etc.
5	↓	1	42	Offer or Invitation for subscription of securities on private placement

Section 179-Powers of the Board has dropped out of the top 5 rank, replaced by section 185 Loan to Directors, etc.

LODR Top 5 Chartbuster Regulations in January 2019

Jan Rank	Change in Rank	Dec Rank	Regulation ref.	Regulation Title
1	↑	2	30	Disclosure of Events or Information
2	↑	-	33	Financial Results
3	↓	1	17	Board of Directors
4	↑	-	18	Audit Committee
5	↔	5	2	Definitions

Regulation 19-Nomination & Remuneration Committee and Regulation 25-Obligations with respect to Independent Directors that were in the 3rd and 4th position in December have dropped out of the 5 list.

IB Code Top 5 Chartbusters in January 2019

Jan Rank	Section Ref.	Section Title
1	7	Initiation of corporate insolvency resolution process by financial creditor.
2	6	Application for initiation of corporate insolvency resolution process by operational creditor
3	30	Submission of Resolution Plan
4	12	Time-limit for completion of insolvency resolution process
5	21	Committee of Creditors

THE FIRST OF FIRST:

ESOP: What was the trigger and When?

By Shankar Jaganathan

Today's Midas touch? Ask the select Flipkart and Infosys employees, they will tell you without any hesitation that it is ESOPs. In May 2018, over a hundred Flipkart employees turned dollar millionaires as the company was bought over by Walmart. A few decades earlier, Infosys the IT Services company created thousands of rupee millionaires and more than a handful of dollar millionaires.

In the start-up world today, ESOP is a vital component of the senior manager's compensation package that often is the decisive factor in their relationship. But where and when did ESOPs start and what does it hold for its participants?

The Concept

The concept of ESOP itself has an ancient history dating back 2000 years to *Arthashastra*. Chanakya, the author laying down the principles for remunerating cowherds classified the herds into three categories along with three distinct compensation structures. For the super breed of cows, a fixed compensation was prescribed to ensure that the herd was not over exploited for short term gains. For the middling breed, a fixed return was provided to the owner and any excess over that was paid to the cowherd as it was attributed to their efforts. Turning to the inferior breeds, the entire income was shared between the owner and the cowherd as the role of the cowherd was critical.

The principle underlying the compensation structure was to link the income/returns to the asset quality and the role played by the employee in generating returns. Where the asset played a key role in determining the return, employees got a fixed share as their contribution was only an enabler, on the other hand where the asset quality was basic and the employees had a substantial role in enhancing the quantum of returns generated, the employees got not just a variable but also a significant share of the return.

In present times, the relationship between individual contribution and participation in ownership of the assets is very clearly visible in technology firms, where ESOPs are more pronounced in one of the three

situations: businesses in their start-up phase, at senior management levels in larger companies and finally in business segments where individual contribution is the difference between success and failure, like in product companies in the tech space.

The First of First

In September 1957, five scientists and three engineers with an idea to explore and exploit- to build transistors using silicon, resigned from Shockley Transistor Laboratories and started Fairchild Semiconductor Corporation. Sherman Fairchild, an inventor and the largest shareholder of IBM, backed the new venture with a funding of $1.38 million. The eight 'founders' took 100 shares each and the two investment advisors who structured the deal took 225 shares, with another 300 shares reserved for key managers to be hired.

The financial investment was made by Fairchild Camera and Instruments, an established and profitable company provided for an option to the investor to buy the shares from the 'founders' and other shareholders at $3 million before the company earned profits of $300,000 for 3 years or $5 million if it deferred its right to buy after it earned the threshold profits. Within 2 years, the new company earned a revenue of $6.5 million resulting in the option being exercised. The team of eight got about a quarter million dollars each for their effort, a very large sum in those days, when the word billionaire was not in popular domain. This paved the way for the new form of compensation in the tech world.

ESOPs in India

Though not well publicized Wipro was the first Indian company in 1985, if not one of the earliest companies in India to introduce ESOPs. However, it was Infosys in the 1990s which brought ESOPs into public discourse with the large number of ESOP rupee millionaires and billionaires it created.

In 1990s, Income tax was a critical factor that added more sheen to the already glittering ESOPs, making it more attractive. Being exempt from tax both at the time of exercise of options and at the time of sale due to the then prevailing tax laws, the value of ESOPs doubled compared to its alternative salaries.

Despite this 'loophole' being plugged in early 2000's, ESOPs continue to be attractive, as the employees get the benefit of stock ownership without making any upfront investments.

ESOPs, its Utility Today

After the dotcom and telecom bubble burst in early 2000's, ESOPs came under enormous scrutiny resulting in the need to account for the cost of ESOPs in the books of accounts by the issuing companies. Earlier, ESOPs were considered free and companies issuing them were not required to account for the cost of options if the exercise price was at market value.

With the accounting change that required the cost of ESOPs to be accounted, established and profitable companies did not see any obvious and explicit benefit in issuing ESOPs. However, in the start-up world ESOP has retained it preeminent position and looks well entrenched for the future.

Compliance Calendar-February 2019

February 7th	TDS payment for January
February 15th	Pay PF contribution for January, 2019
	ESIC payment for January
February 20th	GST Payment for January 2019 - GSTR 3B
	Professional Tax payment
February 25th	PF Return for month of January

Cimplyfive's Offerings



BLISS is a Cloud hosted software that automates the routines, provides an e-repository, timely alerts and a real-time dashboard, all aimed at ensuring compliance and good corporate governance. By doing so, it provides complete peace of mind to the Board of Directors and assurance to professionals by providing them with real-time compliance status with respect to the Companies Act,2013

BLISSPLUS

An advanced variant of BLISS with multiple premium features like Directors view, facility to store past Secretarial records, automated compliance tracker for size based compliance under the Companies Act,2013

BLISS LISTED

An advanced variant of BLISSPLUS for Listed Companies with Companies Act,2013 and SEBI's LODR 2015 compliances integrated to provide a single point compliance automation, risk manager & e-repository for secretarial records including past secretarial records.

BLISSGLOBAL

BLISSGLOBAL for Global Corporate Secretarial teams which helps in handling compliances for companies incorporated across the world by providing Risk Management DashBoard, activity tracker and e-repository of secretarial records.

BLISSDOCS

An Android/IOS based Board app for Directors which provides secure access to Board documents on tablets/mobile phones, enhancing Directors productivity making the Board meetings efficient & effective

CAIRR

CAIRR is a free to use website from CimplyFive that provides at your fingertips, an integrated view of the Companies Act, 2013, IB Code, 2015, LODR, 2015. The site and app is updated daily at 10AM for changes in the Act & Regulations. For more details, please visit www.ca2013.com

Gist of regulatory changes in Companies Act, 2013, SEBI (LODR), 2015 and Insolvency & Bankruptcy Code, 2016 in the month of January, 2019

- **12.01.2019**

The Companies (Amendment) Ordinance, 2019

Ministry of law and Justice has issued the above Ordinance, so as to give a continued effect to the Companies (Amendment) Ordinance, 2018, which would otherwise cease to operate on 21/01/2019.

The Companies Amendment Ordinance 2018, is hereby repealed w.e.f., 02/11/2018 vide the Companies (Amendment) Ordinance, 2019.

All the amendments made through this Ordinance is integrated with the Companies Act, 2013 and is available in our site CAIRR (www.ca2013.com).

- **15.01.2019**

➢ **National Company Law Tribunal (Amendment) Rules, 2019**

This amendment provides that any copy of the application for obtaining the approval of the Tribunal for the consolidation and division of all or any of the share capital into shares of a larger amount than its existing shares which results in changes in the voting percentage of shareholders that was to be submitted to Central Government under rule 71(3)(b) and 71 (4), is now required to be submitted to the Regional Director .

➢ **Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2019**

IBBI has amended the explanation to regulation 6 pertaining to the eligibility for appointment as Liquidator wherein a person shall be considered independent if he is not an employee or proprietor or partner of a firm of auditors or company secretaries or cost auditors of the corporate person by substituting the words "secretarial auditors" for the words "company secretaries".

And also in Regulation 14 pertaining to public announcement to be made by the Liquidator in Form A wherein the stakeholders are required to submit a proof of their claims on or before a date falling thirty days after the liquidation commencement date, has now been substituted as a date falling thirty days from the liquidation commencement date.

- **17.01.2019**

Order in the matter of de-recognition of Insolvency Professional Entities under regulation 14 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016

IBBI has issued the above order de-recognising thirteen Insolvency Professional Entities (IPE) in accordance with regulation 14 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 with effect from 1st October, 2018 for non-compliances of Regulations 12(1)(a),12(1)(b), 12(1)(c) and 12(1)(g) of these Regulations.

Consequently, these Thirteen IPEs are directed to surrender their original certificates of recognition to the Board and also inform the concerned Registrar of Companies about their de-recognition.

- **18.01.2019**

The Insolvency and Bankruptcy Board of India (Salary, Allowances and other Terms and Conditions of Chairperson and members) third Amendment Rules, 2019

Central Government has amended Rule 9 such that the Chairperson and whole-time members of the Insolvency and Bankruptcy Board of India shall be governed by the provisions of the Contributory Provident Fund (India) Rules,1962 and the Contribution Pension System.

- **21.01.2019**

The Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2019

SEBI has amended Rule 2 to include the term "Promoters group" in the definition of deemed to be connected person.

Rule7(1) has been amended to include "members of the promoters group" to make the initial disclosures regarding the securities held in the Listed company within thirty days of publication of this notification in the official Gazette

Rule 7(2) has been amended to include "members of the promoters group" to make continual disclosures to the Listed company regarding the number of such company's securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified

- **22.01.2019**
  - **Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019**

The Central Government through this order has directed all Specified Companies (i.e., Companies who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty five days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of section 9 of the Micro, Small and Medium Enterprises) to file inform MSME Form I details of all outstanding dues to Micro or small enterprises suppliers existing on the date of notification of this Order within thirty days from the date of publication of this notification in the official Gazette.

Every Specified company shall file a half yearly return in MSME Form I annexed to this Order stating the amount of the payment due and the reasons for the delay, by 31st October for the period from April to September and by 30th April for the period from October to March.

  - **The Companies (Acceptance of Deposits) Amendment Rules, 2019**

MCA vide this notification has amended Rule 2 by virtue of which any amount received by a company from "Real Estate Investment Trusts" will not be considered as 'deposits'.

Rule16 pertaining to return of deposits to be filed with the Registrar has been amended to include the explanation to clarify that Form DPT-3 shall be used for filing return of deposit or particulars of transaction not considered as deposit or both by every company other than Government company.

Rule16 A pertaining to Disclosures in the Financial Statement has been amended such that every company other than Government company shall file a onetime return of outstanding receipt of money or loan from 01st April, 2014 till the date of publication of this notification in the Official Gazette, which are not considered as deposits, in FormDPT-3 within ninety days from the date of publication of this notification.

  - **The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019**

MCA vide notification has amended rule 9A of the above rules pertaining to the issue of securities in dematerialised form by unlisted public companies so that it shall not apply to an unlisted public company which is a Nidhi or a Government company or a wholly owned subsidiary of public company.

- **24.01.2019**

The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2019

The Insolvency and Bankruptcy Board of India has been amended for the following changes which will become effective from the date they are notified in the official Gazzette:

Sub-Regulation (4A) is inserted under Regulation 36B: Resolution applicant to provide a performance security (i.e security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor and maybe specified in absolute terms such as guarantee from a bank for Rs. X for Y years or in relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.) while submitting the application to the Adjudicating Authority for an order seeking the assistance of the local district administration in discharging his duties under the Code or these Regulations.

Such Performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.

Sub-Regulation (1B) is inserted under Regulation 38: The resolution plan under insolvency process for corporate persons to include a statement giving details for the failure by the applicant or any of its related parties to implement any resolution plan approved by the Adjudicating Authority under this code at any time in the past.

Sub-Regulation (4) is substituted under Regulation 39: The resolution professional to submit the resolution plan approved by the committee to the Adjudicating authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in the substituted Form H of the Schedule along with the evidence of receipt of performance security as required under the newly inserted sub-regulation (4A) of regulation 36B.

Sub-Regulation (9) is inserted under Regulation 39:
To enable a creditor who is aggrieved by the non-implementation of the resolution plan to apply to the Adjudicating authority for directions.

Substitution of format of Compliance Certificate in Form H specified in schedule 1 of these regulations:
Substituted paragraph 7 of Form H pertaining to amounts provided for the stake holders under the Resolution plan by amending the nomenclature in the column for Category of Stake holders.

In Paragraph 9 two additional rows are inserted one after Regulation 38(1A) to capture the details for the failure by the resolution applicant or any of its related parties to implement any resolution plan approved by the Adjudicating authority under this code at any time in the past (Regulation 38 (1B)) and the other row after 39(2) to include the details of performance security received (regulation 39(4)).

- **30.01.2019**
  Notification on commencement of provisions of Section 465 the Companies Act, 2013
  Central Government has notified the commencement of Section 465 pertaining to Repeal of the Companies Act, 1956, w.e.f. January 30, 2019.

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About CimplyFive

Vision
Leverage research and technology to eliminate procedural non-compliance risk for entities regulated by the Indian Companies Act, 2013.

Mission
Provide a cost-effective, secure web-based, menu driven, subscription services that provides curated resolutions, timely alerts and informative dashboards to free the management bandwidth for pursuing business goals



CAIRR

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